

Stormwater Stakeholders Meeting

Arboretum
December 12, 2003
9:00 a.m. - 12:00 noon

Meeting Summary

Introductions - Name and affiliation

Overview of meeting agenda – Ann Gosline

Technical Workgroup Update- Don Witherill

Don updated the group on the latest meeting of the technical workgroup.

Policy Workgroup Update- Don Witherill

Don updated the group on the latest meeting of the policy workgroup.

Stormwater Report Recommendations - Don Witherill

Don distributed and reviewed a copy of the following stormwater report recommendations.

Stormwater Report Recommendations

1. The Maine Stormwater Law should be amended so that a basic level of water quality protection standards applies to all regulated area of the state, focusing on erosion and sedimentation control, housekeeping and maintenance of “best management practices.” The Maine Erosion and Sedimentation Control Law (ESC Law) alone is not providing sufficient protection.

Rationale: Under the Maine Stormwater Management Law, quality standards only apply if a project is located in a “most at risk” or “sensitive or threatened” watershed. This means that we don’t have the ability to require basic measures to protect water quality. Since we want to keep our clean waters clean, all projects should be meeting basic standards for erosion and sedimentation control and housekeeping, and should be required to maintain any BMPs used. These are low cost measures, that if taken, will help avoid the need for much higher cost remedial measures at some point in the future.

2. The Maine Stormwater Law should be amended so that a one-acre disturbance is subject to regulation rather than using the multi-tiered approach in current law (20,000 sq. ft. impervious, 1 acre impervious or 5 acres disturbed depending on designation of watershed).

Rationale: A single threshold is easier to administer, more readily understandable by the public, and more consistent with the one-acre disturbance threshold in the Federal NPDES Program. It would simplify the question of when a permit is needed and would allow for integration of

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the state and federal programs. The proposed 1-acre disturbed threshold for the Stormwater Law differs from the federal threshold in that:

- It applies regardless of location (there is no “discharge” limitation). The approach proposed is consistent with Maine’s approach to area thresholds in Maine’s ESC Law, Stormwater Law and Site Law, and reflects the State’s watershed approach to protection of water quality. Basic standards need to be met everywhere in the watershed, and temporary measures need to be in place before the beginning of construction.
- The proposed one-acre threshold does not allow the Department to, at its discretion, review projects below one acre in size. This case-by-case smaller threshold is part of federal law and the Maine Construction General Permit (MCGP), but is not proposed to be incorporated into the Maine Stormwater Management Law.

The Department is proposing that projects between 1 and 5 acres disturbed, but less than 20,000 square feet of impervious area (most at risk) or 1 acre impervious area elsewhere be eligible for a “permit by rule” in most, if not all, watersheds. The appropriate standard for impaired watersheds is still being discussed. Permit by rule standards would be basic standards similar to those now in the MCGP, and the MCGP notification would be combined with the permit by rule in those cases where both applied. Other changes in procedures and fees intended to consolidate and simplify these programs are also being considered.

3. The Protection and Improvement of Waters Law should be amended to allow “license by rule” standards for infiltration of stormwater (this proposed amendment is in the Department’s omnibus proposal for this session).

Rationale: This change will eliminate the need for a person who proposes to use infiltration of stormwater, and who is following standards, from having to get a separate wastewater discharge license. Such a requirement would be an unnecessary burden for both applicants and for Department staff administering the program.

4. The Department, through rule, should continue the process of defining and designating “most at risk” watersheds and “sensitive or threatened” regions or watersheds as directed in the Maine Stormwater Law. Streams that are impaired due to urban runoff should be included in the category of “most at risk” as well as streams that have at least 7% of their watershed in impervious area. Areas that are expected to receive sufficient economic or population growth over the next 30 years to have an impact on water quality should be included as “sensitive or threatened.”

Rationale: One of the guiding principles embraced by the stormwater stakeholder group is that the standards should provide “meaningful protection,” i.e., they should accomplish protection without unnecessary requirements. The “most at risk” and “sensitive or threatened” categories provide a way to tailor the standards to the needs of a particular watershed or region.

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Discharges from development in impaired watersheds may be allowed where they will not cause or contribute to a violation of water quality standards. To meet this requirement where urban runoff is a significant contributor to the impairment means that rigorous standards will need to be met. Thus, it is appropriate that impaired streams be included as “most at risk” which allows the Department to require a higher standard. Watersheds that are at least 7% impervious are appropriate for “most at risk” designation given data showing that streams begin to show measureable degradation when approximately 10% of the watershed is impervious.

In addition to watersheds where development activity is already putting water quality at risk, there will be other areas where foreseeable future development will also threaten water quality. *Note: The Department is still working on how to best identify these areas.*

5. The Department, through rule, should develop quantity and quality standards that provide better protection than the current peak flow and Total Suspended Solids standards provide. The standards should also provide options such as compensation fees in watersheds where a local management plan exists and off-site mitigation credits for applicants with projects proposed to be located in impaired watersheds (where they are not allowed to cause or contribute to a water quality violation).

Rationale: This recommendation is again based on the guiding principle that the standards should provide meaningful protection. It is also based on the recognition that for larger projects in impaired watersheds, there needs to be some flexibility if any such projects are to be allowed.

6. The Department, through rule, should reduce standards in impaired watersheds where a local management plan has been developed to address the causes of impairment, provided the plan is approved by the Department, and is being implemented. Allow implementation to be deferred in municipal designated growth zones until financial assistance is available (for a limited time).

Rationale: Local management plans can be better tailored to address issues in a watershed than the state-run stormwater program. In the long run, and with State oversight, they will probably result in more successful protection or restoration work. The Department wants to provide incentive for municipalities to develop local management plans, including where appropriate, stormwater utility districts. Linking implementation of plans to the availability of financial assistance in designated growth zones would provide a way of encouraging growth in these areas without sacrificing progress over the long term in meeting water quality goals.

7. The Department, through rule, should develop maintenance requirements that will improve the level of maintenance on the stormwater treatment practices located on their property by requiring periodic inspection and certification of those practices by an engineer or other qualified person.

Rationale: According to Department field services staff, municipal officials and consulting engineers, maintenance of stormwater BMPs to date has been very poor in general. These groups also agree that the effectiveness of BMPs is greatly diminished without maintenance, in some cases to the point that they do more harm than good. For permitted sites, periodic inspection and certification requirements would increase the likelihood that the needed maintenance will occur, and help the Department to make more effective use of its limited resources for targeted inspections.

8. The Department should make additional amendments the stormwater rules to resolve problems that have come to light through administering the program since 1997. Examples of such needed changes include revised standards for stormwater basins, revised standards for buffers and revised permit by rule standards to focus on projects that do not require engineering review.

Rationale: The Department has been collecting a list of minor issues since it began administering the program in 1997. The Department will include amendments to address these issues at the same time as it proposes other rule changes proposed above.

9. The Department should use the existing Total Maximum Daily Load (TMDL) assessment process to identify significant existing sources of pollutants in impaired watersheds. The Department should regulate those sources using authority of the wastewater discharge law, or should seek additional authority under the Stormwater Law.

Rationale: The Department is required by Federal law to conduct water quality assessments of its surface waters and to develop TMDLs for waters that do not attain their water quality classification. These TMDLs should provide information on the pollutant sources that are causing non-attainment. If water quality is to be restored, those sources need to be reduced or eliminated.

10. If the Department should, through the TMDL process, identify impaired urban streams where the Department determines that it would be infeasible to restore water quality to meet designated uses, then the Department should conduct a Use Attainability Analysis (UAA) for the water resource.

Rationale: The Department's long-term goal for all waters is to have them meet their water quality classification. Over time, opportunities may develop to improve even severely impaired waters. The Use Attainability Analysis is a tool of "last resort" where all efforts to restore water quality that are practicable have been taken and the water still will not meet its classification. If there are urban streams that fit this description, then a UAA is an appropriate action.

- 11.** The Department, through rule, should allow for the use of innovative approaches to meeting stormwater standards, provided contingency plans are developed for use in the event the innovative approach does not work.

Rationale: New products and techniques for stormwater management are still emerging. The Department should encourage innovation in the interest of gaining more information on what works in Maine. Where outcomes are uncertain, there should be back-up plans in place, however, to ensure that there will not be long-term water quality impacts in the event an innovative approach does not work.

Non-Regulatory

- 12.** The Department, with assistance from the Maine State Planning Office, should provide municipalities with tools for developing local stormwater management programs (the Maine Stormwater Law already provides for delegation of the program to a municipality if an approved local program exists).

Rationale: Municipal officials are only just becoming aware of stormwater as an issue that needs to be dealt with at the local level. They need guidance and tools for managing this issue. The State needs to provide this information in order to promote local solutions.

- 13.** The Department, with input from municipalities, should develop a list of financial assistance options for municipalities or watershed districts seeking to develop and/or implement local management programs. The Department should include consideration of these needs in developing priorities for environmental bonds.

Rationale: If municipalities are to play a larger role in managing stormwater, they will need financial assistance.

- 14.** The Department should develop information for the regulated community to improve their understanding of what they need to do to comply with state and federal program requirements. This information should also describe ways to minimize stormwater impacts through the use of Low Impact Development measures.

- 15.** The Department should continue its campaign to build the public's knowledge base on stormwater issues.

- 16.** Continue to offer training to a variety of audiences (developers, contractors, consultants, municipal officials) on proper erosion and sedimentation controls.

Rationale (14 – 16): Awareness surveys have shown that stormwater is not well understood by the public, including the regulated community. In order to improve the quality of stormwater management designs

associated with new development, or with retro-fitting existing development, information on how to reduce development impacts needs to be developed and actively promoted.

Questions/comments on recommendations (by recommendation #) - All

Recommendation #5

Why does DEP feel that local plans would be better than a DEP run compensation program? *DEP lacks the resources to develop and implement plans for projects in every watershed that may have compensation fees collected.*

Could it be that a compensation fee program be approved prior to a full-blown local management plan being approved and implemented? Couldn't projects be approved? *Yes, a local plan (Local Compensation Fee Utilization Plan) for compensation fees could be developed that is separate from a complete local management plan. DEP will develop language to allow for both plans.*

What is the definition of a local management plan? It should be something flexible.

The local plan option should apply to impaired and most-at-risk watersheds. *DEP does intend to make the local plan option available in all most at risk watersheds, whether or not they are impaired.*

Couldn't DEP ask applicants about possible projects?

Could DEP take in compensation fees at first and use the fees to help develop local management plans or utility districts? *Some percentage of the fee could be used for developing and administering a local program. The rules will need to clarify what that percentage could be.*

Could the compensation fees be used to speed up the TMDL process? *DEP does not plan to use compensation fees to speed up the TMDL process.*

Applicants would need to do what is feasible first, only then would they be eligible for a compensation fee or mitigation program.

Recommendation #6

How long would a deferral be good for? What will a local management plan cover? *It has not been determined yet how long a plan could be deferred for financial assistance. Something in the 5 – 10 year range is likely to be proposed. A local plan should address how to restore or protect water quality taking into account both existing and anticipated new development.*

Why have a local management plan and a TMDL? *A TMDL provides an assessment of pollutant loading; i.e., what are the sources of pollution. It does not provide an implementation plan for restoring water quality.. A management plan would provide a strategy for restoration.*

Could compensation fee/mitigation occur in another watershed? *No, compensation fees or mitigation would need to apply to the same watershed.*

Knowing that a local management plan would likely include existing sources may be the catalyst for property owners to allow others to use their property for mitigation purposes.

Don't we need more data/information on what the problem really is?

There needs to be clarification on levels of local management plans.

Recommendation #9

This will cause a heightened need for review and approval in the TMDL process. It will create much more public interest.

What about TMDLs approved prior to any new DEP authority?

Would recommend seeking additional authority under the stormwater law, not using the wastewater discharge law.

What about TMDL implementation as a local management plan? Should local management plans be included here in #9? *DEP anticipates that local management plans would address TMDL implementation needs. DEP has authority to delegate stormwater program administration to a municipality that has a plan for restoring water quality, and is implementing that plan.*

You should consider the conduit argument.

Look at state policy.

Recommendation #4

What about travel corridors?

Surrounding cities/towns? Bordering cities/towns?

Not bad for a starting point.

Don't use population alone.

DEP is more concerned with economic activity than with population. *DEP is continuing work on how to address future growth areas under "sensitive or threatened."*

Recommendation #11

The language needs to be flexible. If something doesn't work to the expected level, allow for changes or additional BMPs to address issues.

Recommendation #7

Where are we with this? *Info is on the website, including a draft rule.*